

FILED

August 11, 1988

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY

By: Joan D. Gelber
Deputy Attorney General
Division of Law - Room 316
1100 Raymond Boulevard
Newark, New Jersey 07102
Tel. (201) 648-2478

ORIGINAL

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO.

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

FRANCESCO LaBRUTO, D.C. :

TO PRACTICE CHIROPRACTIC :
IN THE STATE OF NEW JERSEY :

Administrative Action

FINAL ORDER

This matter was presented by way of Complaint filed November 20, 1986 before the New Jersey State Board of Medical Examiners by the Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General, against respondent, who maintains offices at 843 Kennedy Boulevard, Bayonne, New Jersey 07002. He was charged with various violations of statutes and rules applicable to a licensee of the Board, as set forth more fully in the Complaint. Respondent is presently represented by Anthony F. LaBue, Esq. The parties have conferred on the allegations and defenses thereto, and have determined that the issues can be

resolved in the public interest without recourse to further litigation.

The Complaint charges in Count I that respondent misrepresented to patient Mr. C. S. fee arrangements as such fees might be affected by Medicare, for chiropractic services rendered in respondent's office. Further, it is charged that respondent accepted payments of \$301 made directly by the patient but respondent nevertheless submitted claim forms to Medicare certifying that services worth \$761 had been rendered with no payment made by the patient. The patient would testify that he made payments requested by the staff on the occasion of each visit, and that such payment constituted the patient's entire financial responsibility for the professional services. With regard to these charges, respondent admits receipt of the \$301 from the patient but claims the patient may have misunderstood the statements by the office staff. Respondent does admit certifying to Medicare that services worth \$761 had been rendered to the patient and certifying that no payment had been received by respondent. Respondent ascribes these incidents to error on the part of his staff and his own failure to oversee the clerical work and to note or correct false statements. He insists it was not his intent to defraud the government or the patient and represents that henceforth he shall make a particular point of assuring that proper billing information is communicated to each patient and that claim forms are accurate.

Count II of the complaint alleges that respondent had secured X-ray evaluation of the patient by a radiologist who reported a possible aneurysmal dilatation of the lower abdominal aorta and also suggested further evaluation of the patient by means of ultrasound. It is charged that respondent failed to inform the patient of this and failed to refer him for further medical evaluation. It is further charged that respondent nevertheless proceeded to administer to the patient 17 chiropractic adjustments during a 26-day period until September 13, 1985 when the patient unilaterally terminated treatment. With regard to this charge respondent contends that he was aware of and actually did inform the patient of the radiologist's alert to the possible aneurysm and respondent further claims he did refer the patient to a plenary-licensed physician for follow-up, although there is no documentation to this effect in the patient record and the patient would deny having been so informed or referred. Respondent contends that although he had _____ seen the X-rays, he saw no contraindication to administration of full spine adjustments in this patient based upon the radiologist's written report. However, he represents to the Board that henceforth he shall assure proper documentation of recognized risks or contraindications to treatment and shall assure that explicit communication and referral in such cases is given to a patient prior to commencing chiropractic care.

Count III alleges that the patient's condition of long-standing degenerative arthritis and a congenital abnormality of the cervical spine was not amenable to chiropractic care and that

respondent improperly offered to render same. Dr. LaBruto contends that he was not treating the congenital neck injury notwithstanding the patient's impression to the contrary. Respondent further contends that the pain of some arthritic conditions (although not the condition itself) is amenable to chiropractic care and he asserts a good faith belief on his part that this patient had such a condition.

Count IV charges that respondent prepared a patient record which was deficient in documentation of pertinent data, was written in illegible pencil, and fails to meet accepted standards of practice as well as failing to comply with two Medical Board rules. Respondent acknowledges the state of his record and has represented that henceforth he shall correct the deficient practice.

Count V charges that respondent secured the patient's signature on two Medicare claim forms in an improper manner, i.e. while the forms were blank. Respondent acknowledges securing the patient's signature on blank forms and filling in visit dates, descriptions of treatment, fees charged and amounts paid (or, more specifically, not paid) at a later time without disclosure to the patient. Respondent claims he thought this was acceptable professional conduct. He has agreed to correct this practice henceforth.

Count VI charges that respondent holds himself out as authorized to offer for sale nutritional supplements. He acknowledges placing on his billing, as a line item on his pre-printed billing forms, an indication concerning the availability of

nutritional supplements, although he denies having actually prescribed or sold such product and further asserts that he was unaware that this was impermissible.

Count VII charges that respondent represents performance of and bills separately for physiotherapy. Respondent acknowledges having billed separately for the professional service of physiotherapy and claims he was unaware that this was impermissible.

The various charges in the complaint were alleged to constitute violation of N.J.S.A. 45:1-21(b), (c) and/or (d), (e) and (h); 45:9-5.1; 45:9-14.5; 45:9-18; 45:9-37.12 et seq.; 45:9-41.5; N.J.A.C. 13:35-6.5; N.J.A.C. 13:35-6.14 and N.J.A.C. 13:35-7.1. Sanctions were sought including reimbursement of \$168 to Medicare.

In light of the desire of all parties to resolve this Complaint in an expeditious manner and without resort to further proceedings, the Board of Medical Examiners accepts respondent's explanation with regard to Count III and dismisses that Count in its entirety. The Board accepts respondent's answer of no contest to the charges in the remaining counts.

For good cause shown, IT IS on this 13th of JULY 1988,
ORDERED:

1. Dr. LaBruto shall henceforth determine by acceptable standards of chiropractic practice when a patient's complaint is amenable to chiropractic treatment. He shall make prompt referral

of the patient to an appropriate practitioner for a diagnosis and management of conditions not apparently amenable to chiropractic care as well as referral of conditions in which there is reason to believe that chiropractic care may be contraindicated entirely or may be inappropriate without prior or concurrent medical management.

2. Dr. LaBruto shall henceforth treat patients and prepare and maintain proper patient records in accordance with the Board rules cited herein and in permanent form (no pencil). He may require of the patient a written authorization for release of records and X-rays, but shall not condition such release on a waiver of patient rights. He shall cease and desist sale and/or billing for nutritional supplements or billing separately for physiotherapy.


3. Dr. LaBruto shall personally assure that all billings are accurate and in conformity with the office policies represented to patients. He shall cease and desist from requesting, allowing or accepting any insurance claim form signed in blank.

4. Dr. LaBruto shall reimburse to the patient all fees collected (\$301) within 10 days of the entry of this Order. Dr. La Bruto shall make no attempt to collect further from the patient. Inasmuch as he had represented that he was accepting assignment, his total fee shall be the sum he received as reimbursement from Medicare.

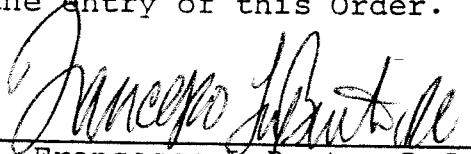
5. Dr. LaBruto is hereby reprimanded for violations stated above and is assessed a monetary penalty of \$500 payable within 10 days of date to the State Board of Medical Examiners.

This order is effective upon entry.

STATE BOARD OF MEDICAL EXAMINERS

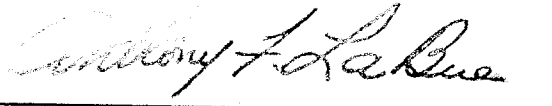

Frank J. Malta, M.D.
President

I neither admit nor deny the findings herein, but consent to the entry of this Order.



Francesco LaBruto, D.C.

Dated: 8-5-88



Anthony F. LaBue,
Attorney for Dr. LaBruto

Dated: 8/5/88

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NOVEMBER 20, 1986

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

ORIGINAL

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Deputy Attorney General
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Administrative Action

NOTICE OF HEARING
AND

NOTICE TO FILE ANSWER

TO: FRANCESCO LaBRUTO, D.C.
843 Kennedy Boulevard
Bayonne, New Jersey 07002

PLEASE TAKE NOTICE that a Complaint, copy annexed hereto, has been made to the New Jersey State Board of Medical Examiners to consider the matter of the suspension or revocation of your license to practice chiropractic pursuant to the authority conferred upon the Board by N.J.S.A. 45:9-1 et seq., N.J.S.A. 45:1-14 et seq., and related administrative regulations. The Board requires you to file an answer to the above charges within ten (10) days from service of

the Complaint. You may file an answer by mail to the address below.

An admission that the Complaint is correct will indicate that you do not contest the charges stated, thus rendering unnecessary any hearing in this proceeding. Your case will then be presented to the State Board of Medical Examiners together with any written matter you may submit with your plea in alleged mitigation of penalty, for a determination as to whether your license to practice should be suspended or revoked or a lesser sanction imposed and whether monetary penalties shall be assessed and, if so, the amount thereof pursuant to the authority conferred upon the Board by N.J.S.A. 45:9-1 et seq. and N.J.S.A. 45:1-14 et seq.

A denial of the Complaint will result in a formal hearing being conducted at a date, time and place to be determined by the New Jersey Board of Medical Examiners which, upon notice to you, will hear the Complaint or refer the matter to the Office of Administrative Law. Adjournments will not be granted except upon timely written application to the Board for good cause shown; any expenses incurred by the Board as a result thereof may be taxed to you. You may appear at the hearing either in person or by attorney or both and you shall be afforded an opportunity to make defense to any or all of the charges.

Failure to respond to this Notice of Hearing and Notice to File an Answer or failure to appear as set forth herein may result in the matter being considered in your absence. A decision

rendered by the Board may affect your privilege to practice your
licensed profession in this State.

STATE BOARD OF MEDICAL EXAMINERS

Charles A. Janousek
Executive Secretary

DATED: November 17, 1986

KINDLY ADDRESS AN ORIGINAL AND ONE COPY OF ALL CORRESPONDENCE TO:

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS
28 West State Street - Room 602
Trenton, New Jersey 08608
Tel. (609) 292-4843

WITH A COPY TO:

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
ATTENTION: Joan D. Gelber
Deputy Attorney General
Division of Law, Room 316
1100 Raymond Boulevard
Newark, New Jersey 07102
Tel. (201) 648-2478

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COMPLAINT

W. Cary Edwards, Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General, with offices located at the Division of Law, Room 316, 1100 Raymond Boulevard, Newark, New Jersey 07102, by way of Complaint says:

COUNT I

1. Complainant Attorney General of New Jersey is charged with enforcing the laws of the State of New Jersey pursuant to N.J.S.A. 52:17A-4, and is empowered to initiate administrative

disciplinary proceedings against persons licensed by the Board of Medical Examiners pursuant to N.J.S.A. 45:1-14 et seq.

2. The New Jersey State Board of Medical Examiners is charged with the duty and responsibility of regulating the practice of chiropractic in the State of New Jersey pursuant to N.J.S.A. 45:9-1 et seq. and N.J.S.A. 45:1-14 et seq.

3. Respondent practices at 843 Kennedy Boulevard, Bayonne, New Jersey 07002 and has held license no. 2338 during all times pertinent to the within Complaint.

4. On or about August 19, 1985 respondent offered to provide chiropractic services to patient Mr. C.S., a recipient of Medicare benefits.

5. Respondent required Mr. C.S. to make payments which were represented to be the full service fees for chiropractic treatment, and over the course of 17 visits the patient paid some \$301. Additional representations were made regarding third party reimbursement of the fees paid by the patient.

6. Respondent, or his agents, servants and employees, submitted three claim forms to Medicare certifying that services in the sum of \$761 had been rendered, and that no payments had been made by the patient.

7. The submission of a Medicare form containing representations that no payments had been made when in fact fees had been demanded and received constitutes fraud, misrepresentation and deception; professional misconduct; and failure of the continuing

requirement of good moral character. N.J.S.A. 45:1-21(b) and (e); and N.J.S.A. 45:9-41.5.

COUNT II

1. Complainant repeats the allegations of Count I.

2. Respondent purported to treat Mr. C.S. for "bilateral sciatica."

3. On or about August 19, 1985 respondent secured X-ray evaluation of the patient from a radiologist who reported a possible aneurysmal dilatation of the lower abdominal aorta and suggested further evaluation with ultrasound. The radiologist also reported, among other things, degenerative changes of the dorsal and of the lumbar spine.

4. Notwithstanding the cautionary report of possible aneurysm, respondent failed to inform the patient and failed to refer the patient for further medical evaluation and proceeded to render some 17 treatments during the 26-day period between August 19 and September 13, 1985, when the patient terminated treatment unilaterally.

5. Said conduct constitutes gross and/or repeated negligence; N.J.S.A. 45:1-21(c) and/or (d); N.J.A.C. 13:35-7.1.

COUNT III

1. Complainant repeats the allegations of Counts I and II.

2. The patient was suffering from the effects of long-standing degenerative arthritis and a purported congenital abnormality of the cervical spine.

3. Respondent knew or should have known that chiropractic treatment for this patient was inappropriate and unnecessary in the circumstances, as neither the arthritis nor the claimed congenital neck condition was amenable to chiropractic care.

4. Urging the patient to receive regular chiropractic adjustments in the circumstances of this case, and the rendering of 17 visits before the patient unilaterally terminated contact, constitutes misrepresentation and deception, gross negligence and malpractice, and professional misconduct; N.J.S.A. 45:1-21(b), (c) and/or (d), (e), (h); and N.J.A.C. 13:35-7.1.

COUNT IV

1. Complainant repeats the allegations of Counts I through III.

2. Respondent prepared a patient record for Mr. C.S. which record is deficient in documentation of pertinent data and fails to meet accepted standards of practice.

3. Said patient record fails to comply with the requirements of N.J.A.C. 13:35-6.5 and 13:35-7.1.

4. The above failure to comply with standards and with rules implemented by the Board constitutes conduct in violation of N.J.S.A. 45:1-21(d), (e) and (h).

COUNT V

1. Complainant repeats the allegations of Counts I through IV.

2. During the period set forth in Count I above, respondent secured the signature of Mr. C.S. on at least two claim forms which were at the time blank. Respondent thereafter added data to the claim forms and submitted or caused them to be submitted to Medicare.

3. Said conduct of securing patient signature on claim forms signed in blank and submitting same, and/or submitting claim forms without patient signature and without adequate explanation therefore, constitutes misrepresentation and deception and professional misconduct, in violation of N.J.S.A. 45:1-21(b) and (e).

COUNT VI

1. Complainant repeats the allegations of Counts I through V.

2. Respondent holds himself out as authorized to offer the sale of nutritional supplements.

3. Said conduct constitutes violation of N.J.S.A. 45:9-5.1, 9-14.5, 9-18; 45:1:1-21(h); and N.J.A.C. 13:35-7.1(d) (5).

COUNT VII

1. Complainant repeats the allegations of Counts I through VI.

2. Respondent claimed performance of "physiotherapy" and billed separately for said services.

3. A representation that physiotherapy is offered and/or performed as well as a billing for performance of such services is reserved by law to persons licensed under the Physical

Therapy Practice Act and specified exceptions thereto. N.J.S.A.
45:9-37.12 et seq.


4. Representation of and billing for physiotherapy by a
chiropractor constitutes violation of N.J.S.A. 45:9-37.12 et seq.;
N.J.S.A. 45:1-21(b) and (e); N.J.A.C. 13:35-6.14 and 7.1(d) (f).

WHEREFORE, complainant seeks judgment from the Board of
Medical Examiners as follows:

1. The suspension or revocation of the license here-
tofore issued to respondent LaBruto to practice
chiropractic in the State of New Jersey;
2. Reimbursement to the patient of \$118 and reimburse-
ment to Medicare of \$168;
3. Assessment of penalty and costs;
4. Such other and further relief as the Board of
Medical Examiners shall deem just and appropriate.

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY

By


Joan D. Gelber
Deputy Attorney General

DATED: November 13, 1986